



Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

March 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2022, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX” or “BZX Equities”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

I. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to modify the Add/Remove Volume Tiers 1 and 2, and to eliminate the Single MPID Investor Tier 1. The Exchange proposes to implement the proposed change to its fee schedule on March 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0016 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 22, 2022), available at https://markets.cboe.com/us/equities/market_statistics/.

thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six displayed add volume tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,⁴ V,⁵ or Y,⁶ where a Member reaches certain add volume-based criteria. Currently Tiers 1 and 2 are as follows:

- Tier 1 provides a rebate of \$0.0020 per share to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV⁷ as a percentage of TCV⁸ equal to or greater than 0.10%, or the Member has an ADAV equal to or greater than 10 million shares.
- Tier 2 provides a rebate of \$0.0025 per share to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.20%, or the Member has an ADAV equal to or greater than 20 million shares.

Now, the Exchange proposes to amend the criteria of Tier 1 and reduce the rebate applicable to Tier 2. Specifically, the Exchange proposes to amend Tiers 1 and 2 as follows:

- Proposed Tier 1 will provide a rebate of \$0.0020 per share to qualifying orders

⁴ Orders yielding Fee Code "B" are orders adding liquidity to BZX (Tape B).

⁵ Orders yielding Fee Code "V" are orders adding liquidity to BZX (Tape A).

⁶ Orders yielding Fee Code "Y" are orders adding liquidity to BZX (Tape C).

⁷ "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

⁸ "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

(i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.15%, or the Member has an ADAV equal to or greater than 15 million shares.

- Tier 2 provides a rebate of \$0.23 per share to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.20%, or the Member has an ADAV equal to or greater than 20 million shares.

Under footnote 4 of the Fee Schedule, the Exchange currently offers two Single MPID Investor Tiers. In particular, the Single MPID Investor Tier 1 provides an enhanced rebate of \$0.0030 per share for Members qualifying orders yielding fee codes B, V, or Y where (1) an MPID has a Step-Up ADV⁹ from May 2021 equal to or greater than 0.10% of TCV or a Step-Up ADV from May 2021 equal to or greater than 8 million shares; and (2) the MPID adds a Step-Up ADAV¹⁰ from May 2021 equal to or greater than 0.05% of TCV. Now, the Exchange proposes to eliminate the Single MPID Investor Tier 1 as no Member has reached this tier in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such a tier. Based on the proposed elimination of Single MPID Investor Tier 1, the Exchange also proposes to renumber existing Single MPID Investor Tier 2 to Single MPID Investor Tier 1.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and

⁹ “Step-Up ADV” means ADV in the relevant baseline month subtracted from current day ADV.

¹⁰ “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4) and (5).

other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members, and thus is in the public interest. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹³ including the Exchange,¹⁴ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

While the proposed changes to the criteria of the displayed add volume Tier 1 is more stringent than the current criteria, the Exchange believes that the change is reasonable as it continues to incentivize Members to increase their displayed liquidity adding volume on the Exchange. Additionally, while the displayed add volume Tier 2 provides a lesser rebate than that currently offered under the same criteria, the Exchange similarly believes that the change is reasonable as it continues to incentivize Members to increase their displayed liquidity adding volume on the Exchange. Furthermore, the Exchange believes that the existing and proposed enhanced rebates under Tiers 1 and 2, respectively, are commensurate with the proposed and existing criteria, respectively. Proposed Tiers 1 and 2 will continue to be available to all

¹³ See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁴ See BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

Members and provide all Members with an additional opportunity to receive an enhanced rebate. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the displayed add volume Tiers 1 and 2 and have the opportunity to meet the Tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for Tiers 1 and 2. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on trading activity from the prior month, the Exchange anticipates that no Member will achieve proposed Tier 1 and two Members will satisfy the criteria under proposed Tier 2. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes the proposed amendment to remove Single MPID Investor Tier 1 is reasonable because no Member has achieved this tier in several months. Moreover, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed liquidity, including the enhanced rebate under the proposed Single MPID Investor Tier 1. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all orders equally, and thus applies to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ...

¹⁵ Supra note 3.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”.¹⁷ Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

¹⁷ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2022-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2022-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CboeBZX-2022-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).